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OFFICE OF PETITIONS

In re Application of :
Sung-Sik Bae :
Application No. 09/859,681 : DECISION DISMISSING
Filed: 18 May, 2001 : PETITION
Atty Docket No. 053785-5015 :

This is a decision in reference to the petition styled under 37 CFR 1.53(e) and 1.181(a)(3) filed on 19 August, 2004, which is treated as a petition requesting that the above-identified application be accorded a filing date of 18 May, 2001, instead of the presently accorded filing date of 24 September, 2001.

On 18 May, 2001, the application was filed.

On 24 July, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of 18 May, 2001, but that Figure 5B described in the specification (description and claims) appeared to have been omitted from the application.

In response, on 18 May, 2001, a copy of Figure 5B was filed. Petitioners state, in a reply filed with the copy of Figure 5B, that Figure 5B "is fully supported by the specification as originally disclosed". The application, including Figure 5B, was then accorded a filing date of 24 September, 2001.

The present petition was filed on 19 August, 2004. Petitioners concede that Figure 5B was not present on filing, but state that Figure 5B contains no new matter. Petitioners request that the application be accorded a filing date of 18 May, 2001, without Figure 5B as a part of the original disclosure.

The petition is dismissed.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

As petitioner supplied the omitted drawings without establishing prior receipt thereof in the USPTO, the application was properly accorded a filing date of the date the omitted drawings were filed. Nevertheless, as a complete application was present on 18 May, 2001, on petition, the application as filed is entitled to a filing date of 18 May, 2001.

The application will be reprocessed using only the application papers present on filing. The drawing supplied on 24 September, 2001, will not be used for processing or examination, but will be retained in the application file.

The application is being returned to Initial Patent Examination Division for reprocessing with a filing date of 18 May, 2001, using the application papers filed on 18 May, 2001, and for an indication in Office records that eight (8) sheets of drawings were present on filing.

Telephone inquiries should be directed to the undersigned at 703 308-6918.



Douglas I. Wood
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Office of Petitions